

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8636 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SURENDAR SHRIKANT DUBE

Versus

COMMISSIONER OF POLICE

Appearance:

MR DASHRATH CHAUHAN for Petitioner
MR UDAY BHATT LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has by preferring this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 29.3.2000, (Annexure-A) passed by respondent no. 1 in exercise of his powers conferred

upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the case of the detaining authority is to the effect that the petitioner-detenu is a "dangerous person" within the meaning of section 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. The detaining authority, before passing an order of detention for arriving at his subjective satisfaction, placed reliance on three IPC cases lodged in Pandesara Police Station which are pending in the court for trial. The detaining authority has also placed reliance on the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. He verified the statements of such witnesses on 24.3.2000 and passed an order of detention on 29.3.2000, which has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed their affidavit-in-replies, in reply to main petition and, thereby they have not controverted the grounds of attack challenged in this writ petition.

4. Shri DR Chauhan learned advocate for the petitioner has argued that the detaining authority has placed reliance on three IPC cases, out of which, last case was lodged on 9.12.99 and, thereafter, the order of detention came to be passed by respondent no. 1 on 29.3.2000. He has argued that there is an inordinate delay of about three months between registration of last case under IPC and the order of detention. It is not important that delay is the only ground for challenging the order of detention. The important thing is explanation for such delay. The detaining authority has not explained the delay of about three months and, therefore, the order is vitiated and the same is required to be set aside. In support of his arguments, he has cited authority of *Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City & Ors.*, reported in 1997(1)GLH 381. In this case, it has been held by this Court that it is true that ipso facto in passing the order of detention after an incident is not fatal to the detention of a person, for, in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority. In this case, the detaining authority hasnot filed affidavit in reply and has not explained the delay and, therefore, the unexplained delay makes a ground of not proximate, vitiating the order, and

therefore, the order of detention is bad in law and same is required to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 29.3.2000 passed by respondent no. 1 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not required in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H.MEHTA, J.)

mandora/